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7 PERFECTO B. AQUINO, et al.,  
8 Plaintiffs,  
9 v.  
10 U.S. BANK NATIONAL ASSOCIATION,  
et al.,  
11 Defendants.

Case No. [15-cv-05181-JSW](#)

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**ORDER REGARDING DISCOVERY  
LETTER BRIEF**

Re: Dkt. No. 45

18 On November 14, 2016, Defendant, Wells Fargo Bank, N.A. (“Wells Fargo”) filed a letter  
19 brief regarding a discovery dispute. Plaintiffs have responded, pursuant to this Court Order dated  
20 November 15, 2016. The Court HEREBY ADVISES the parties that if they fail to submit joint  
21 letter briefs, the party not participating in submission of the brief shall run the risk that the Court  
22 will rule on a dispute without the benefit of that party’s input.

23 **Wells Fargo’s Special Interrogatories (Set One) to Plaintiffs:** Wells Fargo raised two  
24 objections regarding Plaintiffs’ responses. The first is that Plaintiff Zenaido Aquino did not  
25 submit a revised response following a meet and confer on October 7, 2016, although Plaintiff  
26 Perfecto B. Aquino did. Plaintiffs respond that the responses would be identical but is willing to  
27 provide revised responses on Ms. Aquino’s behalf.

28 Wells Fargo also argues that the responses Plaintiffs have provided are deficient. Ms.  
Aquino has not responded a number of issues raised by Wells Fargo, including the fact that her  
responses are not verified, and that she has responded pursuant to the California Code of Civil  
Procedure. “Each interrogatory must, to the extent it is not objected to, be answered separately  
and fully in writing under oath.” Fed. R. Civ. P. 33(b)(3). Plaintiffs shall comply with that rule

1 when they provide the responses required by this Order, and they shall omit any references to the  
2 California Code of Civil Procedure in their revised responses. Any objections should be based on  
3 the Federal Rules.

4 Plaintiffs have clarified that their claims are based on “Wells Fargo’s negligent review of  
5 each of the loan modification applications Plaintiffs submitted” in 2014 and 2015. (Plaintiffs’  
6 Response to Letter Brief (“Resp.”) at 2:12-13.) The interrogatories at issue ask Plaintiffs to  
7 provide “each figure you use[d] to calculate” alleged income income used to support their requests  
8 for loan modifications and the “math used to reach the alleged income.” (See, e.g., Letter Brief,  
9 Ex. A, Special Interrogatories 4, 5.) Wells Fargo argues that Plaintiffs’ responses are non-  
10 responsive in that they either refer Wells Fargo to the amended complaint or to documents that  
11 have been produced or do not address a given loan modification.

12 Plaintiffs respond that third party “MJ Consulting Services, Inc. regularly shreds and  
13 disposes of the financial information submitted to them by borrowers after the application has  
14 been submitted. As such, it has taken some time and will require more time for MJ Consulting  
15 Services, Inc. to piece together Plaintiffs’ financial picture from two years ago, which includes  
16 tracking down the documents and information they submitted to Wells Fargo in 2014.” (Resp. at  
17 1:14-20.) Plaintiffs also state that they are “diligently searching through their files for information  
18 and documents responsive to Wells Fargo’s requests, which they will promptly provide once they  
19 find them.” (*Id.* at 2:6-8.)

20 Fact discovery closed on November 7, 2016. (Dkt. No. 41, Order Scheduling Trial and  
21 Pretrial Matters.) However, Wells Fargo asks that the Court Order Plaintiffs to provide “complete  
22 and compliant” responses to the first set of special interrogatories. The Court concludes that  
23 Plaintiffs’ responses to the interrogatories are insufficient.

24 Rule 33(d) provides that

25 If the answer to an interrogatory may be determined by examining,  
26 auditing, compiling, abstracting, or summarizing a party’s business  
27 records (including electronically stored information), and if the  
burden of deriving or ascertaining the answer will be substantially  
the same for either party, the responding party may answer by:

1                             (1) specifying the records that must be reviewed, in sufficient detail  
2                             to enable the interrogating party to locate and identify them as  
3                             readily as the responding party could; and

4                             (2) giving the interrogating party a reasonable opportunity to  
5                             examine and audit the records and to make copies, compilations,  
6                             abstracts, or summaries.

7                             Plaintiffs have not demonstrated that Rule 33(d) should govern their responses to Wells  
8                             Fargo's first set of interrogatories. Therefore, their revised responses may not simply refer Wells  
9                             Fargo to documents they have produced.

10                            Each Plaintiff shall submit revised responses to Wells Fargo's first set of interrogatories by  
11                             no later than December 23, 2016. That date shall be a hard and fast deadline for the close of all  
12                             fact discovery. If any party seeks to modify that deadline, they must submit a motion to this Court  
13                             by no later than December 16, 2016, that demonstrates extremely good cause to extend that  
14                             deadline further.

15                            **Wells Fargo's Requests for Admission and Special Interrogatories (Set Two) to**  
16                            **Plaintiffs:** Wells Fargo states that it served these documents on Plaintiffs on October 7, 2016, and  
17                             that it has not received responses from Plaintiffs. Although Wells Fargo states that the documents  
18                             were hand-served, Plaintiffs state that due to an "administrative error," they do not have a copy of  
19                             the requests for admission and the second set of interrogatories. Wells Fargo shall provide a copy  
20                             of those documents to Plaintiffs' counsel by December 2, 2016, and Plaintiffs shall respond by  
21                             December 23, 2016.

22                            **Marilo Jackson:** Wells Fargo seeks information about the fees MJ Consulting Services  
23                             collected from Plaintiffs. Plaintiffs object to providing this information on the grounds of  
24                             relevance.

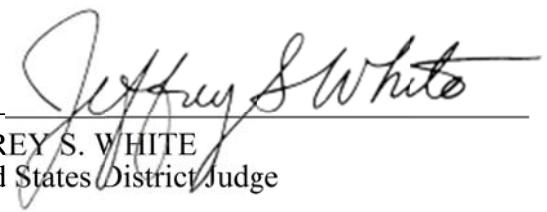
25                             Parties may obtain discovery regarding any nonprivileged material  
26                             that is relevant to any party's claim or defense and proportional to  
27                             the needs of the case, considering the importance of the issues at  
28                             stake in the action, the amount in controversy, the parties' relative  
                           access to relevant information, the parties' resources, the importance  
                           of the discovery in resolving the issues, and whether the burden or  
                           expense of the proposed discovery outweighs its likely benefit.  
                           Information within this scope of discovery need not be admissible in  
                           evidence to be discoverable.

1 Fed. R. Civ. P. 26(b)(1).

2 The parties are HEREBY ORDERED to submit a further *joint* letter brief on this dispute  
3 by no later than 12:00 p.m. on December 2, 2016, which directly discusses the relevance of any  
4 fees paid to Ms. Jackson or MJ Consulting Services to the claims and defenses at issue in this  
5 case.

6 **IT IS SO ORDERED.**

7 Dated: November 28, 2016

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JEFFREY S. WHITE  
United States District Judge

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